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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,  
Plaintiff,

v.

Abdul Malik Abdul Kareem,  
Defendant.

No. CR-15-00707-01-PHX-SRB

**NOTICE OF ERRATA RE  
RESPONSE TO MOTION TO  
DISMISS**

The United States, through undersigned counsel, respectfully submits this Notice of Errata regarding its Response to defendant Kareem's Motion to Dismiss (CR 582.)

In the Response, the government stated: "The time limits in Rule 33 are jurisdictional. *United States v. Smith*, 331 U.S. 469, 472-74 (1947); *United States v. Walgren*, 885 F.2d 1417, 1426 (9<sup>th</sup> Cir. 1989). Therefore, this Court lacks jurisdiction over an untimely Rule 33 motion." (CR 582 at 2.)

The Supreme Court more recently explained that although its precedents used the term "jurisdictional" with reference to Rule 33 (and other rules), the central point of the prior decisions was that "when the Government objected to a filing untimely

1 under Rule 37, the court’s duty to dismiss was mandatory.” *Eberhart v. United*  
2 *States*, 546 U.S. 12, 18 (2005). The Court went on to explain that Rule 33 sets forth  
3 “rigid,” “inflexible,” “claim-processing rules” that require dismissal of an untimely  
4 Rule 33 motion when the government raises a timely objection, but the government  
5 can waive untimeliness by failing to object before the deciding court reaches the  
6 merits. *Id.* at 13, 18-19. Therefore, although Rule 33 requires dismissal of an  
7 untimely motion, that requirement is a claim-processing rule, not a jurisdictional  
8 one.

9 The government stands by its position that Kareem’s Motion to Dismiss is  
10 untimely and respectfully requests the Court deny for that reason in addition to its  
11 lack of substantive merit.

12 Respectfully submitted this 13<sup>th</sup> day of September, 2019.

13 MICHAEL BAILEY  
14 United States Attorney  
District of Arizona

15 *s/ Kristen Brook*  
16 *s/ Joseph E. Koehler*  
17 KRISTEN BROOK  
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19 CERTIFICATE OF SERVICE

20 I hereby certify that on the 13<sup>th</sup> day of September, 2019, I electronically filed  
21 the foregoing with the Clerk of Court using the CM/ECF system, and that true and  
22 accurate copies have been transmitted electronically to counsel for the defendant  
via the ECF system.

23 Daniel Drake & Daniel Maynard, Attorneys for Defendant

24 By: */s Joseph E. Koehler*  
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